Denied 313 US 591

Supreme Court, U. S.
FILED
MAY 3 1941
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 1017

CHARLES W. MILLER,

Petitioner,

vs.

THE UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

WARREN E. MILLER,
Washington, D. C.;
STEPHEN A. CROSS,
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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

To the Honorable, the Supreme Court of the United States:

The petitioner prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Seventh Circuit entered in the above case on December 20, 1940 (R. 42). Petition for rehearing was denied on February 3, 1941 (R. 43).

Opinions Below.

The United States Circuit Court of Appeals (R. 38-41) dismissed this action upon the ground that claim was barred by the statute of limitations, the majority of the court

below adopting the obiter stated in its previous opinion in this litigation, which previous opinion is reported in 114 F. (2d) 267. Circuit Judge Trenor wrote a dissenting opinion based upon the grounds stated in his dissent, also reported in 114 F. (2d) 267.

Jurisdiction.

The judgment of the Circuit Court of Appeals was entered (R. 42) December 20, 1940, and on February 3, 1941 (R. 43) the Circuit Court of Appeals denied petition for rehearing. The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925.

Question Presented.

The question here presented is whether the Circuit Court of Appeals erred in so construing the Act of Congress approved July 3, 1930, c. 849, 46 Stat. 991, 992 (38 U. S. C. A. Par. 445) which amended Section 19 of the Act of Congress of June 7, 1924, c. 320, 43 Stat. 607 (38 U. S. C. A. Par. 445) as requiring the dismissal of this suit by reason of the statute of limitations.

Statutes Involved.

Section 401 of the War Risk Insurance Act as amended December 24, 1919, c. 16, 41 Stat. 371, 374-375, provides in part:

> "Any person in the active service on or after the 6th day of April, 1917, and before the 11th day of November, 1918, who, while in such service, and before the expiration of one hundred and twenty days after entrance into or employment in the active service, becomes or has become totally and permanently disabled, or dies or has died, without having applied for in-

surance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each; and any person inducted into the service by a local draft board after the 6th day of April 1917, and before the 11th day of November 1918, who, while in such service, and before being accepted and enrolled for active military or naval service, becomes or has become totally and permanently disabled, or dies or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each. If he shall die either before he shall have received any of such monthly installments or before he shall have received two hundred and forty of such monthly installments, then $25 per month shall be paid to his widow from the time of his death and during her widowhood; or if there is no widow surviving him, then to his child or children; or if there is no child serviving him, then to his mother; or if there be no mother surviving him, then to his father, if and while they survive him: PROVIDED, HOWEVER, That no more than two hundred and forty of such monthly installments, including those received by such person during his total and permanent disability, shall be so paid. The amount of the monthly installments shall be apportioned between children as may be provided by regulations: * * *."

The War Risk Insurance Act was repealed by Sections 600 and 601 of the World War Veterans' Act, June 7, 1924, c. 320, 43 Stat. 607, 629-630. But all accrued rights and liabilities under the former Act were saved by Section 602 of the latter, which provided:

"The repeal of the several Acts as provided in sections 600 and 601 hereof shall not affect any act done or any right or liability accrued, or any suit commenced before the said repeal, but all such rights and liabilities under said Acts shall continue and may be en-

forced in the same manner as if said repeal had not been made; * * *."

Section 19 of the World War Veterans' Act, 1924, as amended July 3, 1930, provides:

> "No suit on yearly renewable term insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year after the date of approval of this amendatory Act, whichever is the later date, and no suit on United States Government life (converted) insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made." * * *

Section 404 of the War Risk Insurance Act as amended August 9, 1921 (42 Stat. 155), provides:

> "During the period of the war and thereafter until converted the insurance shall be term insurance for successive terms of one year each." * * *

Section 404 of the Act approved June 29, 1936 (Public 844 74th Congress), 38 USCA 445 (d), c. 867-49 Stat. 2034 provides:

> "That in addition to the suspension of the limitation for the period elapsing between the filing in the Veterans' Administration of the claim under a contract of insurance and the denial thereof by the Administrator of Veterans' Affairs or someone acting in his name, the claimant shall have ninety days from the date of the mailing of notice of such denial within which to file suit. This Act is made effective as of July 3, 1930, and shall apply to all suits now pending against the United States under the provisions of section 19, World War Veterans' Act, 1924 as amended; and any suit which has been dismissed solely on the ground that the period for filing suit has elapsed but where

in the extension of the period for filing suit as prescribed herein would have permitted such suit to have been heard and determined may be reinstated within ninety days from the date of enactment of this Act: PROVIDED, That on and after the date of enactment of this Act, notice of denial of the claim under a contract of insurance by the Administrator of Veterans' Affairs or someone acting in his name shall be by registered mail directed to the claimant's last address of record: PROVIDED FURTHER, That the term 'denial of the claim' means the denial of the claim after consideration of its merits."

Statement.

The question here presented is whether, under a correct construction of Section 19, World War Veterans' Act, 1924 as amended July 3, 1930, this suit is barred by the statute of limitations.

The facts pertinent to the question of limitations as set forth in a stipulation (R. 32) are (1) petitioner filed with the United States Veterans' Administration a claim for insurance on June 11, 1931; (2) claim was denied November 8, 1932; (3) letter of notification of such denial was dispatched to him on November 9, 1932; (4) this lawsuit was filed five days thereafter.

If this suit were for war risk insurance benefits, it clearly would not be barred by the statute of limitations, as ninety days is allowed to file suit after notice of denial is mailed by the United States Veterans' Administration (Section 404, Act approved June 29, 1936, Public 844-74th Congress, 38 U. S. C. A. 445 (d) c. 867, 49 Stat. 2034) and petitioner would have had eighty-five more days in which to file suit than elapsed here.

This petitioner, a disabled veteran of World War No. 1, who enlisted in the United States Army of July 10, 1917, and was honorably discharged therefrom on December 20, 1917, filed suit against the United States (R. 1-3) on No-

vember 14, 1932, in the United States District Court for the Eastern District of Illinois for permanent and total disability insurance benefits due to heart trouble, nervousness, extreme weakness and exhaustion, exopthalmic goiter, hyperthyroidism and other diseases (R. 2). The amount claimed was $25.00 per month from December 6, 1917, to the installment due in November, 1932, a total of $4,475.00.

The basis for this suit is found in Section 401, War Risk Insurance Act as amended and Section 19, World War Veterans' Act, 1924 as amended, which statutes are set forth herein under the heading of "Statutes Involved."

This case experienced what the court below described as an "unusual" career (R. 39) from an appellate standpoint, but this phase of the matter is not deemed pertinent to the question here presented. The court below on December 20, 1940 (Circuit Judge Trenor dissenting), in an opinion held (R. 38-41) that this action should be dismissed because petitioner's claim was barred by the Statute of Limitations.

A previous obiter opinion in this case, which is reported in 114 F. (2d) 267 was adopted (R. 41) by the court below and used as a basis for dismissing this action. Reference is made to 114 F. (2d) 267 for the opinion and dissenting opinion of Judge Trenor in this case. Petitioner takes the position here that the dissenting opinion of Circuit Court Judge Trenor is controlling and correctly construes the applicable statutes.

Specifications of Error to Be Urged.

The Circuit Court of Appeals acted contrary to and failed to apply the rules of statutory construction recognized by this and other courts:

(a) that an amendatory act, after its passage should be read as if it had always been in the amended form.

(b) this being remedial legislation, it should be liberally construed so as to give effect to the congressional intent.

Reasons for Granting the Writ.

The court below has decided an important question of Federal law which has not been, but should be settled by this Court and has decided a federal question in a way probably in conflict with applicable decisions of this Court in that it misconstrued Section 19, World War Veterans' Act, 1924 as amended July 3, 1930, as barring petitioner's right to sue in that it acted contrary to and failed to apply the rule of statutory construction that an amendatory act, after its passage should be read as if it had always been in the amended form, which rule has been recognized by this Court in *United States* v. *La France*, 282 U. S. 576, 51 S. Ct. 278, 75 L. Ed. 551; *Blair* v. *City of Chicago*, 201 U. S. 400, 475, 26 S. Ct. 427, 50 L. Ed. 801; *Pennsylvania Co.* v. *United States*, 236 U. S. 351, 362, 35 S. Ct. 370, 59 L. Ed. 616.

ARGUMENT.

THE COURT BELOW ERRED IN CONSTRUING SECTION 19, WORLD WAR VETERANS' ACT, 1924 AS AMENDED JULY 3, 1930, AS BARRING THIS SUIT.

Permission to sue the United States on claims for so-called "automatic" insurance is contained in Section 19 of the World War Veterans' Act, 1924, both as originally enacted and as later amended. It follows therefore that this suit, having been brought after the passage of said act, is controlled by the provisions relative to suit contained in said section as amended July 3, 1930.

Looking at the history of limitations on insurance suits against the United States we find in the War Risk Insurance Act no limitations were placed on suits on insurance.

Neither did Section 19 of the World War Veterans' Act, 1924, as originally enacted, place any express limitation on such suits.

The Act of May 29, 1928 (approved May 29, 1928), c. 875, 45 Stat. 964, prescribed a period of limitations for such suits. It amended Section 19 of the World War Veterans' Act, 1924, as amended, by adding the following:

> "No suit shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made, or within one year from the date of the approval of this amendatory Act, whichever is the later date: Provided, That for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded: Provided further, That this limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director. * * * No State or other statute of limitations shall be applicable to suits filed under this section. * * *."

The correctness of the decision of the court below depends upon the effect of the Act of July 3, 1930, c. 849, 46 Stat., 991, 992 (38 U. S. C. A. Par. 445).

The World War Veterans' Act of June 7, 1924, c. 320, 43 Stat. 607, 612, as amended by the Act of March 4, 1925, c. 553, 43 Stat. 1302 (38 U. S. C. A. Par. 445), contained no provision limiting the time within which suits upon policies of war risk insurance must be brought, and state statutes were therefore held to be applicable. *United States* v. *Sligh* (C. C. A. 9, 1928) 24 F. (2d) 636, 637, 638; *United States* v. *Grigg* (C. C. A. 9, 1928) 24 F. (2d) 638, 639; also, same case, 277 U. S. 582, 48 S. Ct. 600, 72 L. Ed. 998; *Jackson* v. *United States* (D. C. 1928) 24 F. (2d) 981, 983; *Stanley* v. *United States* (D. C.) 23 F. (2d) 870, 871.

The Act of July 3, 1930, c. 849, 46 Stat. 991, 992 (38 U. S. C. A. Par. 445), also amended section 19 of the World War Veterans' Act of 1924, as amended, so as to read as follows:

> "No suit on yearly renewable term insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year after the date of approval of this amendatory Act" (July 3, 1930), "whichever is the later date, and no suit on United States Government Life (converted) insurance shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made: Provided, That for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded: Provided further, That this limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director. * * *"

It is to be seen that in the limitations on actions under Section 19, as revised by the Act of July 3, 1930, such actions were divided into two classes—suits on yearly renewable term insurance and suits on Government life (converted) insurance—and nothing was said about suits on automatic insurance.

Manifestly, automatic insurance is neither yearly renewable term insurance nor Government life (converted) insurance. The distinction between automatic insurance on the one hand and yearly renewable term and converted insurance on the other was clearly made in the War Risk Insurance Act, both as originally enacted and as variously amended. Thus, the Act of February 12, 1918, which amended Section 401 of the War Risk Insurance Act by

extending the time in which application for insurance might be made, provided:

> "that nothing herein shall be construed to effect an extension of the automatic insurance provided for in the said section four hundred and one beyond the twelfth day of February, nineteen hundred and eighteen". (40 Stat. 436, Chap. 17.)

There is nothing in the history of the amendatory Act of July 3, 1930 which suggests that Congress intended to cover automatic insurance by using the terms "yearly renewable term insurance" and Government life "converted insurance". Indeed, the committee reports on the bill which became said act make no mention of automatic insurance, nor do they give any reason for making a distinction between yearly renewable term insurance and converted insurance in prescribing the limitations on suits contained in said act.

It follows therefore that under Section 19 as amended July 3, 1930 there is no limitation on suits on claims for automatic insurance. Since the language of the statute is clear, this conclusion is imperative. *Crooks* v. *Harrelson,* 282 U. S. 55, 60; *United States* v. *Missouri Pacific R. Co.* 278 U. S. 269, 277 & 278.

The court below held in effect that since Section 19 as amended July 3, 1930, contains no limitation on suits on automatic insurance, the limitation on such suits contained in said section as amended May 29, 1928 should be applied. But in doing so the Circuit Court of Appeals violates a well settled rule of statutory construction.

As expressed by this Court, a statute when amended is to be read, *as to all subsequent occurrences,* as if it had originally been in the amended form. *United States* v. *La France,* 282, U. S. 568, 576. That is to say, after the amendment, as to subsequent occurrences, it is as though the

statute had never read otherwise. Hence, the provisions of Section 19 as they existed prior to the amendment of July 3, 1930 cannot be applied to any suit brought after July 3, 1930. In the case of *Layton* v. *United States* (C. C. A. 8), 78 F. (2d) 499, it was held that the trial court erred in applying the limitations on suit contained in said section as amended May 29, 1928.

It was said in the case of *Baille* v. *United States,* 70 Fed. (2d) 527, at page 529:

> "The Act of 1930 was an amendatory act, and, after its passage, section 19, as amended, was to be read, as to all subsequent occurrences, as if it had always been in the amended form. United States *v.* La France, 282 U. S. 568, 576, 51 S. Ct. 278, 75 L. Ed. 551; Blair *v.* City of Chicago, 201 U. S. 400, 475, 26 S. Ct. 427, 50 L. Ed. 801; Pennsylvania Co. *v.* United States; 236 U. S. 351, 362, 35 S. Ct. 370, 59 L. Ed. 616; Kelleher *v.* French (D. C.) 22 F. (2d) 341, 347; Cumberland Telephone & Tel. Co. *v.* City of Memphis (C. C. A. 6), 200 F. 657, 660, 661; Farrell *v.* State, 54 N. J. Law, 421, 423, 424, 24 A. 725; Russell *v.* State, 161 Ind. 481, 482, 68 N. E. 1019."
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> * * * * * * *
>
> "To paraphrase the language of the Supreme Court in Grigg *v.* United States, supra, and Sligh *v.* United States, supra, on page 583 of 277 U. S., 48 S. Ct. 600, 72 L. Ed. 998: As a result of this legislation, the defense of limitations contained in the Act of 1928 is no longer available to the United States in this case"
> * * *

If the Act of 1928 was no longer controlling in the case of *Baille* v. *United States, supra,* it likewise should not be controlling here and the action of the court below in holding it to be determinative of petitioner's right to sue was clearly erroneous.

"In *Westling* v. *United States* (C. C. A. 9, 1933) 64 F. (2d) 464, the plaintiff had obtained his disagreement February 11, 1929. He did not bring suit until June, 1931. The court said relative to the amendment of 1930 (page 465 of 64 F. (2d): "Thus, in the second paragraph of section 4, the period of limitations was extended for another year 'in order that', to quote the Senate Committee report, 'no veteran may be deprived of his right to enforce his contract of Government insurance merely because of lapse of time'. The same paragraph re-enacted the provisions of the Act of May 29, 1928, chapter 875, Par. 1, 45 Stat. 964, by which the period of limitations was suspended during the pendency of a claim in the Bureau and an additional year was given to renew an action which fails for 'defect in process, or for other reasons not affecting the merits'. Furthermore, the statute, like the act of 1928, permits a new action notwithstanding that a judgment had theretofore been renderd against the insued, if that judgment was based upon the defense of time limitation. The liberal policy embodied in these provisions indicates the spirit in which the interpretation of this legislation, at least in so far as it affects claimants' right to judicial review, should be approached."

The Court Below Failed To Construe the Statute Liberally So As To Afford the Relief Which Was Indicated Congress Intended To Grant.

This court held in *United States* v. *Jackson,* 302 U. S. 630:

> "During the World War, it was the policy of the Government to allow soldiers one hundred and twenty days after enlistment or drafting within which to apply for and purchase insurance. For this period, it was intended that they be protected as though they

had bought government insurance. In furtherance of this policy, Congress provided that all veterans, who died or became totally and permanently disabled within one hundred and twenty days after their entrance into active service, should be automatically "deemed to have applied for and to have been granted insurance."

* * * * * * *

"Section 401 did not grant yearly renewable term insurance nor is it an enactment upon that subject. It provided for those soldiers who died in service before they had an opportunity to purchase yearly renewable term insurance or any other type of insurance. This law, therefore, did not pertain to yearly renewable term insurance but to protection for soldiers who never had and never could obtain yearly renewable term insurance.

"It is to be remembered that automatic insurance applied to that particular group of American soldiers who either were killed, died, or became wholly or permanently incapacitated before they had a reasonable opportunity to obtain insurance of any kind."

We urge that because Congress did not specify any statute of limitations for those veterans who were discharged from the Army with their health completely destroyed without having applied for insurance that it was not the intention of Congress when it enacted the Act of July 3, 1930 (46 Stat. 991) authorizing suit upon these contracts to deprive this class of disabled veterans of the rights enjoyed by their more fortunate comrades who applied for insurance.

Clearly, under the facts here present, if this petitioner had been granted a contract of war risk term insurance this suit would not have been barred because of the statute of limitations.

This court in *United States* v. *Jackson*, 302 U. S. 628 82 L. Ed. 488 held:

> "Only clear and unequivocal language would justify a conclusion that benefits provided by a greatful government because of death and permanent incapacity of its soldiers are to be held withdrawn for reasons of economy."

So, here, only clear and unequivocal language would require a construction of the statute so as to deprive the same class of veterans mentioned by this court in the Jackson case, of which, this petitioner is one, of the right to maintain suit as was done by the court below here. No such language appears in the statute, and we submit the court below erred.

To give the construction to the Act of July 3, 1930 that was given by the court below would create a "legal vacuum" which discriminates sorely against these most unfortunate disabled veterans of World War No. 1. They are not, under the construction placed upon this statute by the court below, given the same right to sue as is enjoyed by veterans who applied for insurance. It was never the intention of Congress to deprive this class of veterans of the right to sue; and the court below was in error in so construing this statute.

Further, the respondent herein, by regulation, has recognized that these veterans who did not apply for insurance should be treated like those who applied.

Veterans' Regulation No. 8, promulgated March 31, 1933, pursuant to the Economy Act, provides in part:

> "III. Payments under contracts of yearly renewable term insurance (including automatic insurance) which have matured, and under which payments have been commenced prior to March 20, 1933, or on any judgment heretofore rendered in a court of competent jurisdiction in any suit on a contract of yearly renewable term insurance (*Including automatic insurance*), or which

may hereafter be rendered in any such suit pending in court on March 20, 1933, may hereafter be made.

"IV. Further payment of benefits on accounts of the death of an insured to whom yearly renewable term insurance (*including automatic insurance*) benefits have been awarded and are being paid in accordance with paragraphs III of this regulation shall be made in accordance with the World War Veterans' Act 1924 as amended, and precedents in effect thereunder.

"V. Except as stated above, no payments may hereafter be made under contracts of yearly renewable term insurance (*including automatic insurance*) and all pending claims or claims hereafter filed for such benefits shall be disallowed." (Italics supplied)

This court, in the *Jackson* case, *supra* held:

"It may be that Congress did not believe it proper to economize at the expense of those veterans' who came out of the Army with their health completely destroyed or to the detriment of the soldiers who lost their lives in service without a reasonable opportunity to apply for insurance."

So, here, following the spirit of liberal construction enunciated by this court in the *Jackson* case, petitioner's application for a writ of certiorari should be granted in order to correct the error of the court below in holding this suit was barred by reason of the statute of limitations.

It was clearly the intention of Congress to place automatic insurance in the same category as insurance for which application was made.

The purpose behind said grant of automatic insurance was to afford protection to all those in the active service prior to the publication of the terms of the actual contract of insurance who, of necessity, had not had the opportunity to apply for insurance, as well as to persons who became disabled or died within a limited period after such publication without having applied for insurance. That purpose is well expressed in the statements of Secretary of the

Treasury McAdoo, who was largely responsible for the preparation of this bill before the House Committee on Interstate and Foreign Commerce at the hearings on H. R. 5723, which later became the War Risk Insurance Act.[1]

The statements relative to the automatic insurance provisions in the reports of said committee in submitting the bill to the House show that the purpose of said provisions, as expressed by Secretary McAdoo, was understood and accepted by Congress.[2]

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[1] In the report of the hearings on H. R. 5723 appears the following colloquy (part 2, pp. 36-37):

Mr. Sims: * * * Why should not this bill be amended so as to take effect at a time so early that if the bill should not pass in that time it should be retroactive to that date, so as to cover the case of soldiers who are already in the service and who will be in the service before this bill is approved?

Secretary McAdoo: I think we cover that by a provision of the bill * * *.

* * * * * * *

The Chairman: I do not see how you can make the insurance provision retroactive.

Secretary McAdoo: We have done something similar to that, because we have provided that in case of death which occurs before this bill is passed and before the man can have the opporunity, it would be presumed that he took a certain amount of insurance, and the Government will take care of that.

[2] It was stated in the first report of said committee (H. R. Report No. 130, 65th Cong., 1st Sess., part 1, p. 2):

Another valuable feature of the bill is that if during the first 120 days after the enlistment the soldier should fail to take insurance, and die, he will be considered as insured and the benefits of such insurance will go to his family.

The minority report on the same bill contains a similar statement (H. R. Report 130, part 2, p. 7); and the supplemental report of said House Committee (H. R. Report 130, part 3, p. 12) states:

SECTION 301. Must be applied for within 120 days after promulgation of terms of subsequent entry into service. Any person in active service on or after April 6, 1917, who is totally disabled or dies before expiration of the 120 days is deemed insured for life in monthly installments of $25, and if he dies before receiving 240 such installments, balance payable monthly to, but only if and while there survive him, widow, child or widowed mother.

The word "insurance" is there used in its sense of "contract of insurance," and the words "shall be deemed" are the equivalent of "shall be conclusively presumed." The literal meaning of the whole provision, therefore, is that each person coming within its terms shall be conclusively presumed to have applied for and to have been granted a contract of insurance.

In the case of *Jacob Crvik* v. *United States*, a case in which judgment had been obtained for the payment of automatic insurance benefits by a District Court in 1928, Honorable William D. Mitchell, then Solicitor General of the United States, when the question of authorizing an appeal was before him for consideration was of the opinion that it was obvious that Congress intended those persons receiving automatic insurance benefits to be in all respects like those who applied for insurance, and was of the opinion that they should be treated as if they had contracts.[3]

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[3] OFFICE OF THE SOLICITOR GENERAL,
WASHINGTON, D. C.

17-82-30. November 1, 1928.

Memorandum for Mr. Farnum

In re *Jacob Crvik* v. *United States*.

My first intention was to authorize an appeal on the jurisdictional question, but on going further into the file and giving further thought to the case I am satisfied no appeal should be taken. Whether jurisdiction exists depends on the intention of Congress. It is perfectly obvious that Congress intended those getting "automatic" insurance to be in all respects like those who applied. They are to be treated as if they had contracts. There can be no possible reason why Congress could have intended to deny such persons relief in the courts.

If by any possiblity we should succeed in the litigation, we could only expect remedial legislation to overturn the result and nothing would be gained.

The test I apply in a case like this is whether we could support in the Supreme Court a decision of the Circuit Court of Appeals in our favor. I am satisfied we could not. I think the case is hopeless and we will only be unduly harassing claimants and wasting time and money to go on with it.

The United States Attorneys should be instructed in all these cases not to claim want of jurisdiction.

(S.) WILLIAM D. MITCHELL,
Solicitor General.

The view that claims for automatic insurance are actionable is supported by the weight of judicial precedent and decision. In several of the reported cases involving automatic insurance it appears to have been assumed, without question, by the attorneys for the Government and the courts, that claims for such insurance were actionable. *Anderson* v. *United States* (C. C. A. 9), 36 F. (2d) 45; *United States* v. *Carlson* (C. C. A. 9), 44 F. (2d) 5; *Caprio* v. *United States* (C. C. A. 1), 45 F. (2d) 520; *Kerr* v. *United States* (C. C. A. 9), 61 F. (2d) 800.

It will thus be seen that the government, in its long continued practice, and the several Circuit Courts of Appeal were in accord in treating "automatic insurance" as a contract of insurance.

These insurance contracts are entitled to a liberal construction. In the case of *United States* v. *Cox,* (C. C. A. 5) 24 F. (2d) 944, the court said:

> "Cases dealing with ordinary contracts of insurance are generally not applicable when considering policies of war risk insurance. A policy of war risk insurance is more or less a gratuity from the Government and was so designed to be. The United States assumed all of the extraordinary risks of war, and issued for the minimum premium what might be termed combined accident and life insurance policies, largely in return for the sacrifice to be made by the men of the United States in defense of their country. These policies and the law generally are entitled to the most liberal construction in favor of a soldier. *United States* v. *Law* (C. C. A.), 299 F. 61."

This rule is applied to the construction of the policies themselves.

In *McNally et al.* v. *United States,* (C. C. A. 8) 52 F. (2d) 440, at page 443, it is said:

> "These policies of war risk insurance are entitled to liberal construction in favor of the soldier."

The court states in *United States* v. *Phillips*, (C. C. A. 8) 44 F. (2) 689, at page 692:

> "In view of the policy of the law often expressed by the courts, that these policies are to be liberally construed, we resolve any doubts we have in the matter in favor of the insured."

See also *United States* v. *LePage*, (C. C. A. 1) 59 F. (2d) 165; *United States* v. *Clarence P. Arzner*, 287 U. S. 470.

"A remedial statue must be construed liberally so as to afford all the relief within the power of the court which the language of the act indicates that the legislature intended to grant. *Ross* v. *Doe*, 1 Pet. 665, 7 L. ed. 302; *United States* v. *Padelford*, 9 Wall. 531, 19 L. ed. 788; *Twenty Per Cent Cases*, 13 Wall. 568, 20 L. ed. 707; *Jones* v. *New York Guaranty, etc. Co.*, 101 U. S. 622, 25 L. ed. 1030; *Beley* v. *Naphtaly*, 169 U. S. 353, 18 S. Ct. 354, 42 L. ed. 775; *United States* v. *Southern Pac. R. Co.*, 184 U. S. 49, 22 S. Ct. 285, 46 L. ed. 425."

It was obviously the purpose of Congress by the amendment of July 3, 1930, to extend for one year the statute of limitations on all contracts upon which the claimants had the right to file suit. The Report of the House Committee on World War Veterans' Legislation, March 10, 1930 (Report No. 874, 71st Congress, 2nd Session), in explaining the amendments (p. 7) is as follows:

> "(6) Extends the time for bringing suits on insurance claims for one year from the date of the approval of this amendatory act."

Conclusion.

WHEREFORE it is respectfully submitted that this Honorable Court should, in the exercise of its supervisory powers, grant petitioner's application for a writ of certiorari, and

upon such review the judgment of the Circuit Court of Appeals for the Seventh Circuit should be vacated and reversed, and this case remanded to that Court with instructions to enter judgment for petitioner herein.

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EUGENE BLAND,
Attorneys for Petitioner.

(4126)

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319537—41

In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 1017

CHARLES W. MILLER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (R. 14–18) is reported in 24 F. Supp. 958. The opinion of a majority of the Circuit Court of Appeals and a dissenting opinion (R. 38–41) are reported in 117 F. (2d) 256.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered December 20, 1940 (R. 42). A petition for rehearing was denied February 3, 1941 (R. 43). The petition for a writ of certiorari was filed May 3, 1941. The jurisdiction of this Court is invoked

under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the Act of July 3, 1930, extending the limitation in Section 19, World War Veterans' Act, upon suits for yearly renewable term insurance provided an extension by implication of the limitation upon suits for "automatic insurance" benefits under Section 401, War Risk Insurance Act, as amended, or removed all limitations on such suits.

STATUTES INVOLVED

The statutes involved are contained in the Appendix, *infra,* pp. 8–10.

STATEMENT

This suit was brought against the United States on November 14, 1932 (R. 1), by the petitioner, to recover "automatic insurance" benefits of $25 per month under Section 401, War Risk Insurance Act, as amended (Appendix, *infra,* p. 8). The declaration (R. 1–3) alleged that the petitioner became totally permanently disabled during the period of his military service from July 10 to December 20, 1917, without having applied for insurance (R. 2).

The Government moved to dismiss the action as barred by limitations (R. 5). The District Court found that the petitioner became totally permanently disabled on December 20, 1917 (R. 19). The

court ruled (R. 19) that the suit was governed by the limitation provision of the Act of May 29, 1928 (Appendix, *infra,* p. 9), but in reliance on the holding of the Circuit Court of Appeals for the Seventh Circuit in *Towery* v. *United States,* 97 F. (2d) 906, subsequently reversed by this Court in *United States* v. *Towery,* 306 U. S. 324, allowed recovery of installments from a date six years prior to the date of the filing of claim in the Veterans' Bureau (R. 17–18, 20–21).

The court held (R. 16) that an extension of the time for filing suits on yearly renewable term insurance claims, provided by the amendment of July 3, 1930, to Section 19 of the World War Veterans' Act (Appendix, *infra,* p. 10), did not apply to automatic insurance, relying on *United States* v. *Preece,* 85 F. (2d) 952 (C. C. A. 10th), certiorari denied, 300 U. S. 660, rehearing denied, 300 U. S. 687; *United States* v. *Pastell,* 91 F. (2d) 575 (C. C. A. 4th); and *United States* v. *Oliver,* 86 F. (2d) 1018 (C. C. A. 6th). The court also held (R. 17) that the limitation provision of the Act of May 29, 1928, remained in effect in its application to automatic insurance.[1]

The Government appealed (R. 25) on the ground that the recovery of any installments was barred by limitations (R. 27–28). The Circuit Court of Appeals, upholding the Government's contention (its

[1] The suit in the instant case would have been in time if the amendment of 1930 were applicable, since the claim was filed on June 11, 1931, and not denied until November 8, 1932 (R. 20). See Appendix, *infra,* p. 10.

judgment in the *Towery* case, *supra,* having meanwhile been reversed by this Court), reversed and remanded with directions to dismiss the action (R. 42), the majority of the court stating in its opinion (R. 38–41) that it adopted an *obiter* in the majority opinion rendered on another appeal in the case. *Miller* v. *United States,* 114 F. (2d) 267, 269–270. The views expressed in the *obiter* were substantially in accord with the holding of the District Court as to the inapplicability of the Act of 1930, and the decisions relied upon were the same as those cited by the District Court.

ARGUMENT

The holding of the Circuit Court of Appeals that the time limitation in Section 19, World War Veterans' Act, 1924, as amended by the Act of May 29, 1928 (Appendix, *infra,* p. 9) was not extended as to suits for automatic insurance benefits by the amendatory Act of July 3, 1930 (which in terms extended the limitation only as to suits for "yearly renewable term insurance" (Appendix, *infra,* p. 10) is supported by the unanimous holdings of three other Circuit Courts of Appeals (*United States* v. *Preece, supra; United States* v. *Pastell, supra; United States* v. *Oliver, supra*), and by the recent decision of the Court of Appeals for the District of Columbia in *Weitlauf* v. *United States,*

118 F. (2d) 394.[2] There is no decision to the contrary.[3] In none of those cases was the suit barred if, as the petitioner contends (Pet. 10), the 1930 Amendment (Appendix, *infra*, p. 10) removed all time limitations upon suits for automatic insurance benefits, or if it extended the limitation upon such suits. In deciding in those cases that the suits were barred, the Courts of Appeals held, in effect, that the applicable limitation was the one provided by the Act of May 29, 1928 (Appendix, *infra*, p. 9) (containing no restriction as to the type of insurance to which it was applicable) or the local statute of limitations applicable to suits on contracts.[4]

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[2] Pending on petition for writ of certiorari, No. 1040, present Term.

[3] Indeed, petitioner himself points out (Br. 9–10) that the intention to exclude automatic insurance from the extension of the limitation by the amendment of 1930 is shown by the language of the Act itself and of prior enactments. (See *United States* v. *Preece*, *supra*, pp. 953, 954; *United States* v. *Pastell*, *supra*, pp. 578–579.) An ample reason for such exclusion, mentioned in the former opinion of the court below (*Miller* v. *United States*, 114 F. (2d) 267, 270), is that the claims for disability under automatic insurance (as distinguished from those under yearly renewable term insurance) were all over ten years old when the 1930 Act was passed.

[4] The contention made by petitioner to the effect that the Act of 1930 removed all limitations upon suits for automatic

Petitioner does not contend that the suit would be timely under Illinois statutes (Cf. Pet. 8).

In support of his contention that there is no time limitation upon a suit for automatic insurance, petitioner argues that the limitation upon such suits in the Act of 1928 was repealed by the Act of 1930, which omitted any reference to automatic insurance. But that argument, as stated in the opinion of the District Court (R. 17), is opposed to the rule that repeals by implication are not favored. *United States* v. *Jackson*, 302 U. S. 628, 631. The decisions relied on by the petitioner in this connection (Pet. 7, 11–12) are not in point. The rule, upon which the petitioner relies, that an amended statute should be read as to all subsequent occurrences as if it had always been in the amended form, was not applied in any of those decisions in support of a holding that there had been a repeal by implication of a statute with respect to matters which, as here, were omitted from the amendatory Act.

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insurance benefits was made in support of the petitions for writs of certiorari in the *Preece* case, *supra* (Br. 11), and in *Morgan* v. *United States*, No. 742, present Term (Br. 3), both of which this Court denied. See the discussion of that contention in the Government's brief in opposition in the *Preece* case (pp. 9–11), to which attention was called in the Government's brief in opposition in the *Morgan* case (Footnote 3, p. 4). And see the opinion of the Court of Appeals for the District of Columbia in the *Weitlauf* case, *supra*, where the contention was expressly rejected.

CONCLUSION

Since the petitioner's contentions involve no conflict of decisions, it is respectfully submitted that the petition should be denied.

FRANCIS BIDDLE,
Solicitor General.
JULIUS C. MARTIN,
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WILBUR C. PICKETT,
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FENDALL MARBURY,
W. MARVIN SMITH,
Attorneys.

MAY 1941.

APPENDIX

Section 401 of the War Risk Insurance Act, as amended December 24, 1919 (c. 16, 41 Stat. 371, 374–375), provided in part:

> Any person in the active service on or after the 6th day of April, 1917, and before the 11th day of November, 1918, who, while in such service, and before the expiration of one hundred and twenty days after October 15, 1917, or one hundred and twenty days after entrance into or employment in the active service, becomes or has become totally and permanently disabled, or dies or has died, without having applied for insurance, shall be deemed to have applied for and to have been granted insurance, payable to such person during his life in monthly installments of $25 each; * * *. If he shall die either before he shall have received any of such monthly installments or before he shall have received two hundred and forty of such monthly installments, then $25 per month shall be paid to his widow from the time of his death and during her widowhood; * * *. *Provided, however,* That no more than two hundred and forty of such monthly installments, including those received by such person during his total and permanent disability, shall be so paid. * * *.

The War Risk Insurance Act was repealed by Section 601 of the World War Veterans' Act, 1924 (c. 320, 43 Stat. 607, 629–630). Section 602 of the

World War Veterans' Act provided that the repeal of the War Risk Insurance Act—

> * * * shall not affect any * * * right or liability accrued, * * * before the said repeal, * * *.

Section 19, World War Veterans' Act, 1924, as amended by the Act of March 4, 1925 (c. 553, 43 Stat. 1302, 1303), provided in part:

> In the event of disagreement as to claim under a contract of insurance between the Bureau and any person or persons claiming thereunder an action on the claim may be brought against the United States either in the Supreme Court of the District of Columbia or in the District Court of the United States in and for the district in which such persons or any one of them resides, and jurisdiction is hereby conferred upon such courts to hear and determine all such controversies.

The Act of May 29, 1928 (c. 875, 45 Stat. 964), added the following clauses to Section 19:

> No suit shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made, or within one year from the date of the approval of this amendatory Act, whichever is the later date: *Provided*, That for the purposes of this section it shall be deemed that the right accrued on the happening of the contingency on which the claim is founded: *Provided further*, That this limitation is suspended for the period elapsing between the filing in the bureau of the claim sued upon and the denial of said claim by the director. * * * No State or other statute of limitations shall be

> applicable to suits filed under this section. This section shall apply to all suits now pending against the United States under the provisions of this section.

The Act of July 3, 1930 (c. 849, 46 Stat. 992), contained an amendment of the limitation provisions as follows:

> No suit on *yearly renewable term insurance* shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made or within one year after the date of approval of this amendatory Act, whichever is the later date, and no suit on *United States Government Life (converted) insurance* shall be allowed under this section unless the same shall have been brought within six years after the right accrued for which the claim is made: * * *. [Italics ours.]

This amendment also contained the same provision as the Act of May 29, 1928, relative to the time the right shall be deemed to have accrued, to the suspension of limitations during pendency of claim before the Veterans' Administration, and to the inapplicability of any State or other statute of limitations.

U. S. GOVERNMENT PRINTING OFFICE: 1941